CMPMO No.217 of 2007.

5.10.2007. Present: Ms. Sheetal Kimta, Advocate, for the petitioner.

Mr. Ashutosh Burathoki, Addl. Advocate General, for the State-respondent.

From the perusal of the impugned order dated 9th August, 2007, it becomes abundantly clear that the petitioner-plaintiff was grossly negligent in not getting her statement recorded. The impugned order clearly shows that since 17th November, 2003 the case has been lingering on for the evidence of the plaintiff. It also shows that as early as on 1st July, 2006, last opportunity was granted by the Court below to the petitioner-plaintiff for production of the entire evidence of the plaintiff and yet this was not done. Even thereafter the petitioner obtained adjournments.

The Court is convinced that all along the plaintiff herself was responsible for the delay in the prosecution of the case and for the reasons best known, she did not produce the evidence in the Court nor got herself examined as her own witness. On 9th August, 2007, when the case was fixed for evidence of the plaintiff, she again was not produced. Today, I have been told by Ms. Sheetal Kimta, learned counsel appearing for the petitioner that on that date the plaintiff could not be produced because she is old and keeping unwell. The affidavit of the plaintiff shows that she is merely 61 years of age, that means that she is not old. Nothing has been produced before me to show that as on 9th August, 2007, the petitioner-plaintiff was unwell.

The aforesaid facts clearly indicate that the learned Court below was justified in closing the evidence of the plaintiff-petitioner but taking a lenient view and in the interest of justice, I set aside the impugned order and grant one, just one opportunity to the petitioner-plaintiff to appear in the trial Court as her own witness on 24th October, 2007. This is subject to the following conditions:-

1. The petitioner shall deposit Rs.2,000/- as costs in the High Court Bar Association Welfare Fund Account within two weeks from today.
2. If she does not either deposit the costs amount within the aforesaid period or does not appear on the aforesaid date in the trial Court, this order shall cease to operate.

The petition is disposed of.

CMP No. 809 of 2007.

In view of the disposal of the main petition, this application shall also stand disposed of.

5th October, 2007. (V.K. Gupta), C.J.
(tr)